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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,367	04/05/2005	Jurgen Hemberger	14503-011US1	1076
26191 7590 12/31/2007 FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER DESAI, ANAND U	
			ART UNIT 1656	PAPER NUMBER
			MAIL DATE 12/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/506,367

Applicant(s)

HEMBERGER ET AL.

Examiner

Anand U. Desai, Ph.D.

Art Unit

1656

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 37,43-49 and 51-55.
Claim(s) withdrawn from consideration: 56-73.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 6/25/07 and 9/26/07
13. ☐ Other: _____.

/Robert B. Mondesi/
Primary Examiner
Art Unit 1652, 12-21-07

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claims 37, 43-49, 51-53, and 55 under the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 37-50, 54, 56, and 74-78 of copending application No. 10/506,366 (US 2006/0217293 A1) is withdrawn based on the approval of a terminal disclaimer. The rejection of claims 37, 43, 44, 46, 51-53, and 55 under 35 U.S.C. 102(b) as being anticipated by Leonard et al. (U.S. Patent 5,079,337) is withdrawn based on the amendment and remarks about a single covalent bond between hydroxyethylstarch-protein conjugate.

Continuation of 11. does NOT place the application in condition for allowance because: Claims 37, 43-49, 51-55 stand rejected under 35 U.S.C. 112, 1st paragraph, as failing to comply with the written description requirement because the disclosure does not direct one of ordinary skill in the art to functional derivatives or fragments of the proteins as currently claimed. Claims 37, 43-49, and 51-55 stand rejected under 35 U.S.C. 112, 1st paragraph, because of undue experimentation to make and use the hydroxyethylstarch-protein conjugates as claimed. The prior art has shown a large quantity of experimentation is often necessary to overcome the unpredictable nature of protein conjugation with hydroxyethyl starch polysaccharides. The issue is the breadth of the claims in light of the predictability of the art.